

PROCEEDINGS

OF A

Convention of the Representatives

OF THE VARIOUS

RAILROAD COMPANIES

BETWEEN THE

SEABOARD AND THE WESTERN CITIES,

HELD AT CINCINNATI,

SEPTEMBER 17, 1856.

CINCINNATI:
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1856.

PROCEEDINGS.

At a Convention of the Officers and Managers of the various Railroad Lines between the Seaboard and the Western cities, held at Cincinnati, September 17th, 1856, the following gentlemen were present:

BOSTON AND WORCESTER RAILROAD, IN MASS.

H. E. Sargent, General Freight Agent.

NEW YORK CENTRAL RAILROAD.

Dean Richmond, Vice President.

C. Vibbard, General Superintendent.

S. Drullard, General Freight Agent.

Allen Butler, General Agent.

NEW YORK AND ERIE RAILROAD.

Homer Ramsdell, President.

D. C. McCallum, General Superintendent.

B. W. Blanchard, General Freight Agent.

C. Smith, Director.

B. F. Smith, Ticket Agent.

PENNSYLVANIA CENTRAL RAILROAD.

H. J. Lombaert, General Superintendent.

H. H. Houston, General Freight Agent.

L. L. Houpt, General Ticket Agent.

BALTIMORE AND OHIO RAILROAD.

L. M. Cole, General Ticket Agent.

L. S. Gordon, General Freight Agent.

GRAND TRUNK RAILROAD, OF CANADA.

S. P. Bidder, Managing Director.

HUDSON RIVER RAILROAD.

Samuel Sloan, President.

M. L. Sykes, Jr., Vice President.

Dean Richmond, Director.

PITTSBURG, FORT WAYNE, AND CHICAGO RAILROAD.

John Fleming, General Ticket Agent.

John J. Houston, General Freight Agent.

BUFFALO AND ERIE RAILROAD.

C. C. Dennis, Superintendent.

Dean Richmond, Vice President.

CLEVELAND AND ERIE RAILROAD.

A. Stone, Jr., Director.

A. Hills, General Freight Agent.

H. Nottingham, Superintendent.

CLEVELAND AND TOLEDO RAILROAD.

E. B. Phillips, Superintendent.

MICHIGAN SOUTHERN AND NORTHERN INDIANA RAILROAD.

Samuel Brown, General Superintendent.

A. Wilkinson, Assistant Superintendent.

MICHIGAN CENTRAL RAILROAD.

R. N. Rice, General Superintendent.

George Williams, Jr., General Freight Agent.

— Reed, General Agent.

CLEVELAND, COLUMBUS, AND CINCINNATI RAILROAD.

A. Stone, Jr., Director.

A. Hills, General Freight Agent.

E. S. Flint, Superintendent.

H. C. Marshall, General Ticket Agent.

LITTLE MIAMI RAILROAD.

Jacob Strader, President.

John Kilgour, Secretary.

W. H. Clement, Superintendent.

COLUMBUS AND XENIA RAILROAD.

Jacob Strader, Director.

John Kilgour, “

W. H. Clement, Superintendent.

CENTRAL OHIO RAILROAD.

S. Perkins, Superintendent.

J. W. Brown, General Ticket Agent.

D. S. Gray, General Freight Agent.

CINCINNATI, WILMINGTON, AND ZANESVILLE RAILROAD.

W. W. Bagley, Assistant Superintendent.

KENTUCKY CENTRAL RAILROAD.

C. A. Withers, Superintendent.

CINCINNATI, HAMILTON, AND DAYTON RAILROAD.

S. S. L'Hommedieu, President.

George Carlisle, Vice President.

J. A. Wright, Director.

ILLINOIS CENTRAL RAILROAD.

George Watson, Superintendent.

Robert Forsyth, General Freight Agent.

John Corning, General Passenger Agent.

NEW ALBANY AND SALEM RAILROAD.

John B. Anderson, Superintendent.

N. Stevens, General Freight Agent.

TERRE HAUTE AND RICHMOND RAILROAD.

Samuel Crawford, President.

Charles Wood, Secretary.

INDIANAPOLIS AND CINCINNATI RAILROAD.

T. A. Morris, President.

H. O. Lord, Vice President.

INDIANA CENTRAL RAILROAD.

James M. Smith, Superintendent.

PERU AND INDIANAPOLIS, AND TOLEDO, WABASH, AND WESTERN RAILROAD.

P. E. Sickler.

OHIO AND MISSISSIPPI RAILROAD, OF OHIO AND INDIANA.

Andrew Talcott, C. Engineer and Superintendent.

OHIO AND MISSISSIPPI RAILROAD, OF ILLINOIS.

Isaac Wyman, General Ticket Agent.

CHICAGO, ALTON, AND ST. LOUIS RAILROAD.

Hamilton Spencer, Lessee.

H. A. Gardner, Chief Engineer.

BELLEFONTAINE LINE.

John Brough, President.

NORTHERN RAILROAD, OF NEW YORK.

George Parker, Superintendent.

LAFAYETTE AND INDIANAPOLIS RAILROAD.

J. O. D. Lilly, Superintendent.

JEFFERSONVILLE RAILROAD.

A. E. Crothers, Superintendent.

E. M. Lemont, Freight Agent.

TERRE HAUTE AND ALTON RAILROAD.

Charles Cruft, President.

LAKE SHORE RAILROAD.

William R. Barr, General Agent.

CHICAGO AND BURLINGTON RAILROAD.

C. G. Hammond, Superintendent.

NORTHERN CROSS RAILROAD.

W. G. Bullions, Superintendent.

BUFFALO AND CORNING, AND GENESEE VALLEY RAILROAD.

Charles G. Miller, Superintendent.

On motion of Mr. Sloan,

Mr. Ramsdell of the New York and Erie Railroad was appointed President of the Convention.

On motion of Mr. Stone,

Mr. Lord of the Indianapolis and Cincinnati Railroad,

Mr. Sykes of the Hudson River Railroad,

Mr. Wilkinson of the Northern Indiana Railroad,
were appointed Secretaries.On motion, the following circular, defining the objects of
Convention, was read.

CINCINNATI, Sept. 1, 1856.

DEAR SIR—In view of the extremely low rates that have been adopted by the various Railroad Lines between the Seaboard and the Western Cities, which have been ruinous to the interest of the parties engaged in the competition, and to the Railroad interests generally, it has been thought best to call a meeting of the Managers of the various Railroad Companies who are interested in establishing uniform rates, on both passengers and freights, between common points, both East and West, to see if some plan cannot be devised to adopt such rates as will be remunerative to the Stockholders, and be adhered to by the Companies doing the business.

In accordance with the above, a meeting has been called, to be held in the City of Cincinnati, September 17th, 1856, at 10 o'clock, A. M.; and you are respectfully requested to send such delegates as you may think proper, to represent your Company in the meeting.

G. TWITCHELL, Sup. Boston & Worcester R. R. Company.

C. VIBBARD, " New York Central "

D. C. MCCALLUM, Sup. New York & Erie "

H. J. LOMBAERT, " Pennsylvania Central "

W. S. WOODSIDE, Master Transp. Baltimore & Ohio R. R. C.

G. W. CASS, Pres. Pittsburg, Fort Wayne & Chicago R. R.

THATCHER PERKINS, Sup. Central Ohio Railroad.

L. M. HUBBY, Pres. Cleveland, Columbus & Cinc. R. R.

E. S. FLINT, Sup. " " "

R. N. RICE, " Michigan Central Railroad.

SAM. BROWN, " South. Michigan & North. Indiana R. R.

L. TILTON, Vice Pres. Toledo & Wabash Valley Railroad.

JOHN BROUGH, Pres. Bellefontaine & Indianapolis "

J. S. NEWMAN, " Indiana Central "

JACOB STRADER, " Little Miami "

WM. DENNISON, Jr., Pres. Columbus & Xenia "

W. H. CLEMENT, Sup. Little Miami & Col. & Xenia "

On motion of Mr. Sloan it was

Resolved, That it is expedient to raise the rates of passenger fare.

On motion of Mr. Brough it was

Resolved, That the subject of passenger fare be referred to a Committee of nine.

The following gentlemen were appointed by the President:

C. Vibbard, N. Y. Central Railroad.

D. C. McCallum, N. Y. & Erie "

Geo. Williams, Michigan Central Railroad.

H. J. Lombaert, Pennsylvania Central "

L. M. Cole, Baltimore & Ohio "

J. F. Boyd, Bellefontaine Line.

Geo. Parker, Northern New York "

Isaac Wyman, Ohio & Mississippi "

H. C. Marshall, Cleveland, Columbus & Cincinnati R. R.

On motion of A. Stone, Jr., it was

Resolved, That the subject of freight rates be referred to a Committee of ten.

The Chair appointed:

L. S. Gordon, Balt. & Ohio R. R.

Sol. Drullard, N. Y. Central "

H. H. Houston, Penn. Central R. R.

E. B. Phillips, C. & Toledo "

A. Hills, C. C. & C. "

Geo. Williams, Jr., Mich. Central R. R.

B. W. Blanchard, N. Y. & Erie "

H. E. Sargent, B. & Worcester "

W. H. Clement, L. M. & C. & X. "

John Brough, Bell. & Ind. Railroad,
as the Committee.

On motion of Mr. Brough, of Bell. & Ind.,

Resolved, That a Committee of seven be appointed to report upon the means of giving force and effect to the orders and proceedings of this Convention.

The Chair appointed:

Dean Richmond, N. Y. Central R. R.
D. C. McCallum, N. Y. & Erie "
A. Stone, Jr., C. & E. & C. C. & C. R. R.
H. J. Lambaert, Penn. Central "
T. Perkins, Central Ohio "
H. Spencer, C. A. & St. Louis "
W. H. Clements, L. M. & C. & X. "

The Chairman called the attention of the Convention to some printed documents relating to the suit of Ross Winans against the New York and Erie Railroad Company, for the infringement of his Patent for the eight-wheeled car.

Upon the suggestion of Mr. Kilgour, the Secretary then read the following Statement of Eaton, of Counsel for the Defendant:

45 WALL STREET, NEW YORK, }
Sept. 12, 1856. }

Homer Ramsdell, Esq., Pres't N. Y. & E. R. R. Co.:

MY DEAR SIR:—Your letter of the 10th instant, in which you make the request that I will state the nature and effect of the matters involved and decided in the case of Ross Winans against the New York and Erie Railroad Company, lately tried at Canandaigua, before Judge Hall, has been received, and I will proceed to state what seems appropriate in answer thereto.

There is certainly no occasion for surprise in the fact that those interested in the railroads of the country attach much importance to the result of that suit. For eighteen years the railroad companies and car manufacturers of the United States have been annoyed by demands for money, threatened with injunctions, and burthened with heavy expenses, founded on the claims of Mr. Winans upon the patent which the jury in the verdict they rendered at Canandaigua, and the court in its opinion then delivered, have declared to be alike unfounded in law or fact. It has very seldom happened that so large interests have hung in suspense upon the issue of any litigation; or that questions have been involved that have had so wide an application through every part of the United States as those raised in this suit. It involved substantially the right of railroad transportation in this country, except subject to such tribute as Mr. Winans might deem it expedient to levy. The

car and engine builders, and the railroad companies throughout the Union, and every stockholder and bondholder in railroads, wherever he might live, had a common interest in the controversy. The claims made by the plaintiff were so exorbitant, especially until very lately, that they were justly regarded as threatening a serious blow to the already depressed credit of railroad securities; so that resistance was absolutely a measure of necessary self-defence. On the other hand, the hope of enforcing the claim was that of realizing a fortune of such princely magnitude as an inventor has hardly ever before attempted to grasp. It was at one time a question of millions, to be assured by a verdict of a jury—not indeed in a single suit, but as the result of enforcing the plaintiff's claim wherever railroads were in use and the courts of the United States had jurisdiction. A single verdict, sustained by the court, would enable that result to be easily reached. Stimulated by such hopes and fears, the litigation has been conducted with a corresponding perseverance, labor, and talent; from Maine to Maryland, through a period of eighteen years, in various courts of law and equity, against a great number of railroad companies and against other defendants, before juries of the country and juries of the city, before not less than six different judges of the courts of the United States, with all the talent and learning that abundant means and a liberal hand could supply, with a pertinacity of purpose rarely equaled, the plaintiff has pressed his claims. In the outset, and apparently guided by a different policy, it would seem as if the modesty of the demands made were thought to afford to the parties sued a hope of cheaper relief than the necessary expense and trouble of a defence, though successful. Influenced, as it would appear, mainly by such considerations, several companies, at an early day, purchased of the plaintiff, for a small sum (less than the cost of a single witness on the late trial), the right to use the alleged invention.

But when the railroads of the country had multiplied, and the investment already made in the prosecution of the claim, and the feeling excited by the controversy and the interests of those who had entered into the matter for speculative purposes, had become controlling considerations, so that retreat seemed to involve shame and dishonor, and success promised a reward which would justify vast efforts and hazards, the door of compromise was closed, and the controversy entered upon in earnest on both sides. Neither time, nor labor, nor money were spared. The history of railroads was thoroughly investigated from their origin, both in the United States and in England. Every old workshop was searched for plans and drawings of early railroad cars—every venerable engineer and machinist was questioned of his experience relative to railroad carriages. No geologist ever examined more carefully for antediluvian remains than the parties to this controversy searched through the ruins of old dilapidated railroad carriages for any thing that would aid the claim or defence. On the trial at Canandaigua, the plaintiff not only brought huge old cars from Baltimore, but also transported several car loads of the ruins of antiquated railroad carriages from Quincy, Massachusetts, which had, for nearly a quarter of a century, been left to decay. The principles of science, so far as involved in the construction and propulsion of railroad carriages, were also put to the torture to extort something favorable to the claim or defence.

All the old treatises about railroad machinery were brought forth from their hiding places; great numbers of scientific experts were examined by the day, and hundreds of the witnesses were collected from various States, to explain the history of car building. Evidence was accumulated by the volume, arguments were made by the week, trials were measured by the month, counsel fees were paid by the "five thousands," and models were made by the car load, the history of railroads was lithographed, and counsel worked by the year. In a single suit, in a single year, before the same court, over seventy-five days were occupied in actual trial before a judge and jury, and at the end of the year each party found itself occupying the same position as at the beginning. It is safe to say that more than one hundred and fifty thousand dollars have been expended on this litigation, and until the verdict in favor of the New York and Erie Railroad Company at Canandaigua, no substantial progress has been made by either side, though the plaintiff had once obtained a verdict against the Troy and Schenectady Railroad, in the very court-house in which our verdict was obtained; the court, however, declined to act upon that early verdict, having become convinced, as it is supposed, that justice was not done to the defence on that trial. It therefore has happened that, though the last of all the suits that have been commenced in eighteen years of litigation, the one against the Erie Road first raised the legal questions in a form to be carried to the Supreme Court of the United States for a final determination.

One great difficulty with the defence has been that the plaintiff has constantly shifted both the ground and the place of attack—sometimes suing in Maryland, sometimes in New York, and sometimes in Massachusetts—so as to cause a new set of counsel to be brought into the defence, who would labor under great disadvantage, for want of familiarity with the complicated matters of fact and science involved.

The case, even to those most familiar, is one of great difficulty, calling, as it does, for an investigation of matters so long since transpired, and for a history and detailed explanation of the operation of structures long since decayed and out of use, and of which many of the builders are dead or in parts unknown, or from want of memory are unable to afford the information desired. Nearly all the matters of fact involved relate to the period of 1834 and prior thereto.

The patent on which the suits are brought was granted on the first day of October, 1834, and being of itself *prima facie* evidence of the originality of the alleged invention by the plaintiff, and the plaintiff having taken due precaution to preserve the proof of certain leading facts, he has had a great advantage over the defence in regard to the evidence of matters happening more than twenty years ago. It has, therefore, followed that it has been only after repeated trials and accumulated researches by different persons, that the full strength of the defence has been called forth, and the unfounded character of the plaintiff's pretensions exposed. Every new trial appears to have weakened the claim and strengthened the defence. Cars embodying the essential features of the plaintiff's alleged invention, though in practical use in Quincy, Massachusetts, several years before Mr. Winans applied for a patent, have been brought to light for the first time during the past year, in preparing for the trial at Canandaigua; and scientific theories, claimed in his patent as essential and useful, and which, probably in

the main through his influence, have been brought extensively and perniciously into operation and use on railroads, were, on that trial, for the first time, adequately demonstrated, on scientific principles, to be unfounded and pernicious. It is not too much to say that the investigations made in the preparation for the various trials had in suits brought on this patent, have demonstrated the inutility of those features in a railroad carriage which Mr. Winans most confidently commends, and have led to their rejection, and to the adoption of improved methods of construction, which, having been applied to practice, have, perhaps, in their remunerative results, in the aggregate, more than compensated the railroads of the country for the heavy burthen which Mr. Winans' suits have imposed on them. A single illustration of this assertion will not be inappropriate. Mr. Winans, in his patent, insists on the importance of the greatest nearness of the axles of the wheels in the trucks of an eight-wheel car, and great remoteness of the trucks themselves; but practical experience, greatly aided by the scientific investigations made about the defence of his suits, has demonstrated the pernicious effects of that theory, and shown that the axles should be as far apart as the width of the track, and that the trucks should not be at the ends of the body; and such are the views and structure adopted by the best managed roads of the country, even including those of six feet gauge. The same remark might be made relative to his theory of exclusive center bearings and coned wheels. The history and philosophical principles of no branch of mechanical science have probably ever been more thoroughly investigated than those of railroad transportation in the preparation of these suits. The volumes of evidence taken in these cases, and the models and drawings therein referred to, will furnish the future historian of the history of transportation on land, a rich mine from which to draw his materials.

Every one who has any acquaintance with patent suits brought against railroad companies (and unfortunately few who have had any connection with railroads have been left ignorant of them), will be interested in a brief history of the leading suits commenced on this patent. It may aid somewhat in deciding the question now presented with such annoying frequency, whether a claim on a patent against a railroad company should be compromised or resisted. I have already said that the patent of Mr. Winans is dated on the 1st day of October, 1834. He was then a resident of the city of Baltimore, where he still resides.

About four years after this, I think in 1838, the alleged invention being disputed about Baltimore, Mr. Winans commenced a suit against the New Castle and Frenchtown Railroad Company, a road in the vicinity of Baltimore, which was tried before Chief Justice Taney, and in which the plaintiff failed to recover a verdict. It would seem that, little encouraged by that experiment near home, no further effort was made to enforce the claim for a period of nine years, when in 1847, many railroads having been built in the meantime, and speculators being understood to have become interested in the patent, the place of attack was changed to New York. A suit, therefore, was commenced against the Troy and Schenectady Railroad Co. This case was brought to trial in 1850, at Canandaigua, and the counsel for the defence, though gentlemen of great ability, yet not being adequately acquainted with the history of railroads, and especially with the facts known in Balti-

more, relative to the origin of the invention, suffered a defeat. Since this success, the place of trial appears never to have been removed back to the vicinity of Baltimore. As I have said, the judges regarded this last trial as unsatisfactory, and the plaintiff has been unable to make any use of his success, very prejudicial to the transportation interests of the country.

It became necessary, therefore, to institute other suits, and fight the battle over again from the beginning.

The next suit, so far as I am informed, was commenced against the New York and Maryland Line R. R. Co. I believe this suit was commenced in Philadelphia. The merits of the defence are said to have been but little investigated. Yet the plaintiff appears to have made no considerable progress toward establishing his patent. Since that date many suits have been commenced on the patent—some at law and some in equity—several of which are still pending. Among them are the following: Ross Winans *agt.* Eaton & Gilbert (car builders), Ross Winans *agt.* The Utica and Schenectady Railroad Company, Ross Winans *agt.* The Albany and Schenectady Railroad Company, Ross Winans *agt.* The Syracuse and Utica Railroad Company, Ross Winans *agt.* The Rochester and Syracuse Railroad Co., Ross Winans *agt.* The Buffalo and Rochester Railroad Company, Ross Winans *agt.* The Eastern Railroad Company (a New England road), Ross Winans *agt.* The Harlem Railroad Company (in which the two jury trials mentioned herein have been had), Ross Winans *agt.* The Hudson River Railroad Company,* Ross Winans *agt.* The New York and Erie Railroad Company; and I am informed that since the commencement of the two latter suits, which were instituted in June, 1855, and before the trial at Canandaigua, Mr. Winans commenced a suit against some small railroad company in the vicinity of Albany, New York. The settlement of the suit against the H. R. R. Co. had made it doubtful whether the experiment of a trial before an Albany jury was attainable without another suit being commenced against a road in that vicinity.

When the expense of each of these suits, the annoyance of conducting a litigation over so wide an extent of country, and the fact that it had been persevered in for nearly twenty years, are considered, no one can doubt the correctness of the general report, that Mr. Winans is a man of great wealth, and great strength of will. The litigation of Mr. Winans has not illustrated the attempt of a modest and needy inventor to obtain the reward due to his skill; but the energy of a man of fortune and calculating sagacity, in an effort to realize the fruits of a carefully designed system of thrift, to be carried out by the aid of numerous patents upon expanding branches of industry, with which his business had made him and those in his employ very early familiar. It has illustrated also the evil of granting patents founded on complicated and ingenious specifications, that so slightly discriminate what is alleged to be new, and what is admitted to be old, that the practical mechanic finds himself unable to draw the dividing line. It has illustrated a frequent abuse of the policy of the patent law.

Indeed it is nearly impossible to state, in any reasonable limit, what

*NOTE.—This suit was commenced about the same time as the one against the New York and Erie Railroad Co., and Messrs. Eaton & Davis appeared as attorneys for the companies in each suit. But before the time of trial the H. R. R. Co. settled its suit with Mr. Winans, and of course withdrew from the defence.

Mr. Winans, in his specification, claims to have invented. Judge Nelson has repeatedly ruled that it embraced the exclusive right to make, vend, and use the eight-wheel railroad car, of the structure now in common use "*as a whole car*;" and Judge Betts and Judge Hall ruled that the claim only covered a particular form of arranging the wheels in the truck and connecting them with the body; while eminent counsel for the respective parties have argued with a plausibility that has greatly embarrassed the court, that coned wheels and fixed wheels, and a certain length of body, and a certain distance apart of the trucks, were and were not (according to their respective theories), essential parts of the invention, or necessary elements of its practical application. These various views have not practically been treated as mere theory, but have really exerted a controlling influence on the case; and the discussions of sixteen years found them unsettled; so that the science of coned wheels and fixed wheels, and vibratory motion was largely investigated, before the learned judge who presided at Canandaigua was able to give the claim that practicable, and, as the defence consider, sound and just construction, that will probably put an end to further litigation before a jury.

The claim made by the patentee has always been broad enough to cover the exclusive right of using railroad cars of the form now used by all the railroads of the country; and has been a claim in which all railroad companies and car-builders have justly regarded themselves as having a common interest—the interest of self-preservation. Success on the part of Mr. Winans would prostrate them all at his feet. There can be but little doubt that the managers of nine-tenths of the early railroad companies purchased and put in use their cars in utter ignorance of the claims of Mr. Winans, and that they were as much surprised at hearing his claim of \$100 a year for the right to run an eight-wheel railroad car, as they would have been had he claimed the same sum for the right to use a sorrel horse on a common road-wagon. And even after all the noise this famous litigation has made, there are doubtless many railroad managers and car-builders, who will be surprised to learn that if the ruling in the case against the New York and Erie Railroad Co., made by Judge Hall at Canandaigua, is not sustained on appeal to the United States Supreme Court at Washington, they will be soon called upon to pay damages for each car they have run for years past, at the high rate we have indicated, or to enter upon the defence of an action which cannot be conducted through a single trial for less than \$20,000 to \$25,000. Yet such is the sober fact. Stale and unfounded as the claim may be regarded, it is by no means dead, and will be enforced with unyielding pertinacity, if we may judge the future by the past.

It might be that with a few roads, and with a view to enlist their influence for the patent, settlements would be made for a much less sum than I have indicated (and doubtless settlements would be so made with all as the litigation now stands), yet it cannot be doubted that, if the decision referred to is reversed, the claims of the patentee would rise to the amount of damage he claims to have proved on the trials referred to.

There has also been great danger that feeble roads, whose means were not adequate to the defence of such expensive suits, would allow verdicts to go against them, upon the basis of which injunctions might

be obtained against all the other roads, to the great peril of general inland transportation.

It was, as you know, in view of such considerations, strengthened by the feeling that each railroad owed all others a common duty, to resist so dangerous and unfounded a claim, that the N. Y. & E. R. R. Co., finding itself sued and forced to pay a large sum or resist, deliberately decided to defend the suit, let the defence cost what it might; nor was that company deterred from that defence by the withdrawal of the Hudson R. R. Co. from any participation of the expense; nor at a later period by an offer of settlement from the plaintiff, which was more reasonable than the claim made in the suit, or any previous offer. Though the N. Y. & E. R. R. Co., as you are well aware, might have been the gainer, directly and temporarily (and would have a very clear right to consult its own interest, by taking advantage of the great reduction of the claim of the plaintiff, which its own preparation for the defence had tended mainly to produce), yet the managers of the company felt that to abandon the defence, after having become fully acquainted with its strength, might be regarded as an admission that it was untenable, and would leave other railroad companies and car-builders more than before at the mercy of the plaintiff, and they therefore declined to do so.

That company felt that having discovered and rendered available, at great expense, new and valuable testimony, never before brought to light, and that if properly presented must end in a defeat of the stupendous claims by which the railroads of the country had been for so long harassed, it was its duty to persevere in the defence, though at some sacrifice of its immediate interest. It did so, and the result has justified the expectation in which it persevered. Though the expenses were very heavy, they have been paid with a cheerfulness greatly heightened by the reflection that if its verdict is sustained at Washington every thousand dollars it has paid for the defence will save ten or twenty thousand dollars to the railroads of the country; and it is no more than just to say that for the perseverance and firmness which has reached this result, they have occasion mainly to be thankful to yourself.

It is not easy for one not familiar with the expense of complicated patent suits to appreciate the cost of defending a suit like the present. Without entering into any considerable detail, it will suffice to state that the trial occupied between four and five weeks, and that there were four counsel on each side engaged in the trial, several of whom had devoted nearly a year to the preparation of the cause for trial, and were some of them gentlemen whose services command the highest compensation known to the profession of which they are distinguished members. That there were between eighty and one hundred witnesses, residing in many different States, examined on commission (or by deposition), and some of them at such length as to require from three to four hours to read a single deposition. The fees of the commissioners, for the defence alone, in taking those depositions, were not much short of \$1,000. There were ten or eleven gentlemen, of high scientific attainments, retained as witnesses through most or all of the trial, that had each to be paid \$25 or more per day for their services. The expense for models and lithographs, &c., to illustrate the history of railroad science, cost some thousand dollars. The single item of board of witnesses for the defence, during the trial, was between \$600 and \$700. Short-hand

writers were paid between \$1,400 and \$1,500 for reporting the evidence. From these facts some idea may be formed of the expense such a suit involves.

The opinion of Judge Hall, and the subsequent proceedings of the last day of trial, which embrace the exceptions, by the counsel for the plaintiff, which are appended hereto, will supersede the necessity of any further explanation of the technical matters of law and fact involved and passed upon at the trial. They are given literally from the reporters' notes.

A few words, however, seem to be required in explanation of the origin of the alleged invention, and the early carriages used on said roads, which were subject of discussion on the trial.

In 1830 Mr. Winans was in England, where eight-wheel railway carriages had been described in general treatises, by eminent engineers, then in circulation. He soon after returned to the United States, and entered into the employment of a Railroad Company, at Baltimore. Between his return and October, 1834, there were several eight-wheel railroad cars constructed and put into use, in and near that city. These cars, beyond all dispute, in most particulars, corresponded with Winans' patented car. The defence insist confidently that those cars, whoever invented them, were fully dedicated to the public. In order that the difficulty of the evidence in the case may be appreciated, it must be borne in mind, that the origin (as to invention) of each of these cars, its correspondence as a mechanical structure with the car patented, and with the cars of the New York and Erie Railroad Company, were all matters of dispute. Many witnesses were brought from Baltimore to the place of trial to testify on these points, and models and drawings were made of each of those cars, and the conflicting opinions of experts pronounced upon them.

About the same time an eight-wheel car was made in Philadelphia, and put into use; the origin, structure, and scientific principles of which were in like manner the subject of very accurate and laborious investigation. It seems to have been the invention of Richard Inlay, who appears to have known nothing of Mr. Winans' experiments.

Prior to Winans' alleged invention there were several descriptions of eight-wheel cars constructed and used in the vicinity of Baltimore, known as the Timber, Wood and Trussel cars. They were in use in 1830. Each of these were claimed to embody all the essential features of Winans' alleged invention. Models and drawings were made of each of them, and many witnesses were examined in regard to their origin, operation, and structure.

Horatio Allen, an eminent engineer of New York, designed in 1830, and put in use in 1832, an engine which was claimed to apply and illustrate all the essential features of the alleged invention of Mr. Winans; and this engine was amply illustrated by models and diagrams, and its origin, operation, and scientific principles of construction and operation were explained by Mr. Allen, and discussed in great detail.

Another engine, made in 1833, by John B. Jervis, an engineer of high repute, was, on some of the trials, subjected to a like examination.

Some other cars, called the Washington cars, and made in 1834, were illustrated in drawings and models also, and their history unfolded. But the most important of all the eight-wheel cars invented and in use in the United States, before Mr. Winans put forth his exclusive claim,

were what are called the Quincy Cars. These cars were the invention of Gridley Bryant, of Boston, an engineer of great ingenuity and skill, to whom the country is probably more largely indebted for useful and valuable inventions, manfully and generously offered to public use, than to any man in the United States. He was really the first inventor in the United States of a practicable and valuable eight-wheel railroad car. He made the invention in 1829. The court and jury are believed, in the case against the Erie Company, to have regarded the Quincy car of Bryant as embodying in 1829 every essential feature found in the car, patented by Mr. Winans in 1834. Mr. Bryant deserves the gratitude of the railroad interests of the country, as a man of science and genius, who has contributed largely to the useful inventions of the age. The form, operation, and history of these Quincy cars were illustrated by models and drawings in the late trial, with great care, and were explained on the stand by men *who more than a quarter of a century before* had worked with them about the transportation of the foundation stones of Bunker Hill Monument. It is a singular fact that particular structure (among the variety) of the Quincy cars, that more clearly than any other, embodied all the essential features claimed by Mr. Winans, had remained undiscovered and unillustrated through all the eighteen years of litigation on this patent, until the *present case and during the present year*. This fact will illustrate the difficulty of defending a suit, in which the origin of a structure alleged to have been invented twenty-two years ago, is involved, and in which the case of the plaintiff is made out by the bare production in court of a copy of a paper certified at the patent office. And perhaps it equally well illustrates the necessity of some law forbidding any suit on a patent, the validity of which, if questioned, has not been established before the proper tribunal within some period much shorter than twenty years after it was granted. If a patent cannot be established in less time than that, it may safely be regarded as of too doubtful originality to be entitled to the stringent protection of the patent laws.

It cannot be wise policy to give the protection of the patent laws to an invention, the nature, extent, and originality of which are so dubious and questionable that no two judges in twenty years can agree upon its interpretation, and no jury from Maine to Maryland can agree on its originality. What is claimed to be new and given the advantage of legal monopoly, ought to be reasonably clear and certain.

The facts to which I have referred show that eight-wheel cars had sprung into existence in various parts of the Union when they were needed, and at about the same time. Besides these American cars, anterior to Winans' patent, there were various prior English inventions of eight-wheel railway carriages that were relied upon by the defendants.

The oldest printed description of an eight-wheel English railway carriage was found in the 24th volume of *The Repertory of Arts*, published in London, in 1814, twenty years before the date of the plaintiff's invention.

The next was a description of an engine in Wood's *Treatise*, published in London in 1825. The third was what is known as the Tredgold car, a description and drawing of which was published in a volume entitled "A practical treatise on Railways and Carriages, &c., &c., by Thomas Tredgold, Civil Engineer, &c., &c.," printed in London in

1825. These public treatises, were doubtless easily procurable by Mr. Winans while in England, in 1830. Indeed Mr. Winans does not profess to have been the first inventor of an eight-wheel car, though Judge Nelson's decision seems to give him the exclusive right to use it *as a whole*. In respect to the carriages described in these treatises, it was confidently claimed on one side, and as confidently denied on the other, that they embodied the essential features of modern railroad carriages, so far as the claims under the patent were concerned. Drawings and models of the carriages described in these works were constructed, by each side, in conformity to the idea and interpretation of them entertained by the scientific experts and engineers examined and relied on as witnesses before the jury. Such a course of investigation constantly raised the questions: What were the essential principles of these carriages? what are the essential principles of the alleged invention of Mr. Winans? what are the essential principles of the cars in use on the New York and Erie Railroad? Upon these vital questions, it is unnecessary to say that no two of the very experienced, learned, and intelligent witnesses of opposite sides could agree; and it would be hardly too much to say, that no two of those examined by the plaintiff's agreed. These inquiries branched out into almost endless detail about scientific equivalents, analogous powers, and like means for like ends: but all ending alike in hopeless doubts and contradictions on any other theory than that founded on the sober facts of the case, that Mr. Winans had really invented nothing new. The most that can be said is, that he reinvented and modified an old devise, and *did nothing more*. If new to him, it was not new to science nor in the experience of practical life. Such is a brief outline of the history and main features of Mr. Winans' celebrated litigation with the railroad companies and car-builders of the United States. It is perhaps a controversy without a parallel.

The case will probably be carried up to the Supreme Court of the United States, for argument of the questions of law raised in the exceptions to the charge of Judge Hall. If the rulings of the judge are sustained, as I feel very confident they will be, the litigation will be at an end. If the judge's opinion is overruled, the case will be sent back to be again tried before a jury. But, in that event, it by no means follows that the railroads will suffer a final defeat, for great confidence is felt that, on the facts alone, whatever construction may be given to the claim of the patent, the plaintiff must suffer a final defeat, before any honest and intelligent jury having the whole history of the matter before them.

I should appear to claim what is not my due, by omitting to declare that the success of the defence is mainly to be attributed to the experience and ability of my associates in the trial, Mr. Hubbell, of Philadelphia, Mr. Stoughton, of New York, and Mr. Whiting, of Boston. It is due also to Mr. Nathan Randall to state, that to his perseverance and energy in discovering and rendering available the evidence for the defence, and particularly in hunting up the old carriages, so long forgotten and left to decay, the railroads and car-builders of the country are largely indebted.

It can hardly be doubted that the successful resistance of this ambitious claim of Mr. Winans will exert a salutary influence, beyond the matters it involves. It may operate as some check upon the numerous

extortionate claims founded on useless or pretended patents with which railroads, above all others, appear to be beset. It is well known that there are few things about a railroad car or truck that are not the subject of several patents.

If a claim is made on a pretended patent and the road pays promptly, the chances are equal that the claim was wholly unfounded. If the company resists, an expensive law suit may be the result; and, perhaps, added to this a heavy verdict is given against the company by some jury, founded on the pretence that the Company had niggardly refused to purchase a patented improvement; when, in reality, the old structure was far superior to the new. It may be hoped that a successful defence of a claim, so confidently and ably urged, as that of Mr. Winans, will teach speculators in patents a little caution, and give those who are besieged by them a little courage.

This claim of Mr. Winans had peculiar features of aggravation, and involved on assurance perhaps unparalleled. For, after the railroads had paid largesums for patent wheels, patent springs, patent boxes, patent axles, patent bolsters, patent brakes, patent transom plates, patent ventilators, patent metal, and other patent fixtures of less note, quite too numerous to mention, Mr. Winans comes along and very coolly claims the "*car as a whole*" and \$100 per year for its use during the whole time that Railroad Companies had been adorning and improving it by purchase of all these expensive additions. Viewing the matter in this aspect, and giving the patent the interpretation claimed by the plaintiff, it was certainly desirable to wait until the car was improved to the greatest extent, before taking possession of it "as a whole." There is a degree of assured audacity about such a claim, that seemed to indicate that the time for absolute submission or resolute, manly resistance had arrived.

Those men who really invent something new and valuable are undoubtedly amongst the most useful citizens, and deserve every protection the law can give them. There is nothing in the result of this litigation that need discourage them. In saying this much, I have not intended to charge Mr. Winans with any want of sincerity in making his claim, or of honor in enforcing it. He, doubtless, believes himself the inventor of the car he describes, and thinks himself entitled to be paid for it. I make no charges against him except the want of that sound judgment and perception which the history of his litigation will warrant. He has exhibited an energy and strength of purpose that few men can look upon without admiration, mingled, indeed, with some degree of pain, that the declining age of a man of ample fortune and prosperous family, should be embittered by disappointments in the prosecution of a claim alike unfounded in law and in justice. Being under the necessity of alluding to much of what is personal to Mr. Winans, I have felt called upon, in justice to him, to indicate my opinion of the general integrity of the motives with which he has maintained this great litigation.

Hoping, my dear sir, that this statement, which I have been compelled to sketch very hastily, may serve your purpose,

I am, very respectfully, your obt. servt.,

D. B. EATON.

On motion it was

Resolved, That this Convention adjourn until the reports of the various committees should be prepared.

Adjourned.

AFTERNOON SESSION.

Convention met, according to adjournment, September 18,
5 P. M.

Mr. Vibbard, Chairman of the Committee on the Passenger
Tariff, reported the following resolutions:

REPORT OF COMMITTEE ON RATES OF FARE.

The Committee to whom was referred the subject of passenger fares, present the following report:

Resolved, That the fares between New York and common points in the West, shall in no case exceed two and one-half cents per mile through; and of this sum the roads between Crestline and New York shall receive \$14 60.

Under this resolution, the fare shall be as follows:

New York to Columbus	\$16 25
" " Cincinnati.....	18 50
" " Chicago.....	22 00
" " St. Louis.....	27 75
" " Terre Haute.....	22 00
" " Indianapolis.....	20 00

Resolved, That it is inexpedient to have different rates of fare for summer and winter between the Seaboard and the West; and that we recommend that the above rates be uniform the year round.

On motion,

Resolved, That the report be accepted.

On motion,

Resolved, That the resolutions of the committee be considered separately.

On motion of Mr. Vibbard,

Resolved, That each railway company represented in this Convention shall be entitled to but one vote on any subject submitted to its consideration, and that each Company furnish the Secretary with the name of the person authorized by them thus to act.

On motion of Mr. Stone,

Resolved, That no railroad company not interested in the subject matter of any resolution, shall be allowed a vote on the same.

Mr. McCallum offered the following amendment to the second resolution of the committee :

Resolved, That the New York and Erie Railroad may reduce the passenger fare East by one train daily, from the opening until the closing of navigation on the Hudson River, to such rate of fare as shall be charged by the New York Central Railroad from Buffalo to Albany, and by the Hudson River steamboats to New York.

Mr. Houpt offered the following amendment to the amendment of Mr. McCallum :

Resolved, That the Pennsylvania Central and Baltimore and Ohio Railroads be allowed to make the same reduction of fare contemplated in the amendment of Mr. McCallum, as the New York and Erie Railroad.

Mr. McCallum here withdrew the amendment proposed by him.

Mr. Ramsdell offered the following resolution :

Resolved, That the second resolutions reported by the committee be stricken out, and the following adopted, to wit :

Resolved, That the rates above adopted take effect on the first of November next, and continue until the first of April ; after which time the fare shall be left for future adjustment. Adopted.

Mr. Brough offered the following amendment to the third resolution of the committee :

Resolved, That the Superintendents of the New York Central, the New York and Erie, the Pennsylvania Central, and Baltimore and Ohio Railroads, designate the trains on which the same shall take effect. Adopted.

The resolution, as amended, was then adopted.

The committee on revising the present rates of freights, then reported the following resolutions :

Resolved, That the present classification of the New York Central, New York and Erie, and B. and W., and Western Railroads, shall be used in common by the following lines and roads, viz : New York Central, New York and Erie, Pennsyl-

vania Central, and Baltimore and Ohio, on *all* westward bound freight from New York and Boston (by whatever mode of transit); to all points, in common with the several lines named.

Resolved, That this committee recommend the adoption of the following rates, to commence on the first of October and continue until the taking effect of winter rates on all westward bound freight from New York via the New York Central, New York and Erie, Pennsylvania Central, and Baltimore and Ohio Roads, to the several points hereafter named; and further recommend that a committee of one or more from each of these four lines and their western connections, be here appointed to meet at Baltimore on the first of October, review, and if need be, modify the classification hereby jointly adopted; and at the same time to arrange through winter rates to common points over the respective lines represented.

WESTWARD MINIMUM RATES.

	1st Class.	2d Class.	3d Class.	4th Class.
New York to Cincinnati, all rail.....	\$1 40	1 10	95	70
“ “ part rail, part water..	1 30	1 05	90	65
“ Columbus, all rail.....	1 35	1 05	90	68
“ “ part rail, part water...	1 25	1 00	85	63
“ Indianapolis, all rail.....	1 50	1 20	1 00	75
“ “ part rail, part water	1 40	1 10	95	70

EASTWARD MINIMUM RATES.

Cincinnati to New York, water.....	Flour,	\$1 25 per bbl.
“ “ “	Fourth class,	65 per cwt.
Columbus “ “	Flour,	1 10 per bbl.
“ “ “	Fourth class,	58 per cwt.
Indianapolis, “ “	Flour,	1 30 per bbl.
“ “ “	Fourth class,	68 per cwt.

Resolved, That it is expedient and proper that fair and remunerative rates should be charged by all lines for the transportation of freight; that, to common points, the price should be the same, and no price to an intermediate point should be made which, with the addition of ordinary local rates, would reduce the rate, to a common point beyond, below the through rate of competing lines.

On motion,

Resolved, That the report of the committee on revising the rates of freight be accepted.

On motion, the first resolution, as reported by the committee, was adopted.

On motion of Mr. Brown,

Resolved, That all the matter in the resolution of the committee relating to the meeting at Baltimore, be stricken out.

On motion of Mr. Brough,

Resolved, That this Convention adjourn to meet in the city of Cleveland on Wednesday, the first day of October, at 10 o'clock A. M., for the purpose of reviewing and re-arranging classifications of freight; of fixing winter rates of fare and freight, at remunerative rates, and of acting on such other matters as may be presented, touching the general railroad interests of the country; and that the respective roads and connecting lines are earnestly requested to send representatives—Executive Officers or Directors—fully clothed with power and authority to give force and efficiency to the resolutions and orders of the Convention.

Resolution passed.

Resolved, That the Secretary be requested to send a copy of the above resolution to the officers of the respective roads.

Mr. Houston offered the following amendment to the first part of the second resolution :

Resolved, That the rates to and from New York, by the different lines here represented, be the same as the rates charged by the New York Railroad companies at the commencement of the summer tariff of 1856, by their routes with steam on Lake Erie; and that these shall be the minimum rates by any route to or from New York from Monday, the 22d day of September, until the rates are put into effect that may be adopted at the Railroad Convention that is called to meet at Cleveland on the first of October.

Mr. Williams offered, as an amendment to the above, a resolution that the further consideration of the subject matter of the resolution reported by the committee be postponed until the meeting of the Convention to be held at Cleveland.

The amendment proposed by Mr. Williams was rejected.

The question was then taken on the amendment proposed by Mr. Houston, which was rejected.

The original resolution was then adopted.

Mr. Stone, from the Committee on devising means for the enforcement of the orders of the Convention, reported the following resolutions, which were adopted :

Resolved, That if any company forming any part of a competing line between points where rates of fare or freight have been established by this Convention, shall reduce such rates, the roads forming competing lines may reduce their rates between the same points, and such reduction shall be shared *pro rata* per mile by the whole line; and that the company first making the reduction shall not be allowed to share in the advantage of such *pro rata* division, but shall submit to the whole loss by the reduced rates it makes.

Resolved, That if the rates fixed by this Convention, between any points, shall be changed by the mutual consent of all the roads interested; or if rates shall hereafter be fixed by mutual agreement by roads between competing points, not provided for in the rates now fixed, and any road shall reduce such rates, in violation of such agreement, the same rule as to dividing the reduction shall be applied in such cases as is above provided.

Resolved, That in adjusting their tariff of freight or passengers, roads forming competing lines shall not fix their local rates, so that they shall be in the aggregate less than the through rates as now fixed, or hereafter to be agreed upon, and that in case the local rates shall be fixed below the through rates, the same shall be deemed a reduction of through rates, and that reduction on competing lines may be made, and shall be shared by other roads, as provided in the above resolution.

Mr. Houston offered the following resolution:

Resolved, That no Railroad Company here represented will permit any of their agents or employees to give receipts, or contract in any manner, binding their company to deliver freight from any point to any other point within a specified time.

Rejected.

On motion of Mr. Brough, the following resolution was adopted:

Resolved, That in the death of John H. Done, late Superintendent of the Illinois Central Railroad Company, while in the discharge of his duty, the Railroad interest of the country lost an able and valuable man, the community a good citizen, and his family a protector endeared to them by kindness and affection in all the social relations of life.

Resolved, That while lamenting the sudden death of our late colleague, we deeply sympathize with his afflicted family in this their bereavement.

On motion of Mr. Stone :

Resolved, That the Secretary be requested to superintend the printing of the minutes of the Convention, and furnish each of the Lines represented with copies thereof and the bill of expenses.

Letters were then read from the Secretary of Cincinnati Horticultural Society, inviting the members of the Convention to attend the Fair now being held in the city ; also from M. M. Benton, Esq., President of the Covington and Lexington Railroad, inviting members to a ride to Lexington.

On motion, the thanks of the Convention were returned for the courtesies.

On motion, the thanks of the Convention were returned to Mr. A. B. Coleman, for the free use of Rooms at the Burnet House.

On motion, the Convention adjourned to meet at Cleveland, the 1st of October, 1856.

HOMER RAMSDELL,

President.

H. C. LORD,	}	<i>Secretaries.</i>
M. L. SYKES,		
A. WILKINSON,		

At a Convention of the Officers and Managers of the various Railroad Lines between the Seaboard and the Western cities, held at Cincinnati on the 17th inst., the following Resolution was adopted:

"Resolved, That this Convention adjourn, to meet in the city of Cleveland, on Wednesday, the first day of October next, at 12 o'clock, M., for the purpose of renewing and re-arranging classifications of freights, and of fixing winter rates of fare and freight at remunerative rates, and of acting on such other matters as may be presented, touching the general Railroad interests of the country; and that the respective Roads and connecting Lines are earnestly requested to send, as representatives, executive officers or directors, fully clothed with the power and authority to give force and efficacy to the resolutions and orders of the Convention."

In accordance with the above you are respectfully requested to send such delegates as you may think proper to represent your Company at this meeting.

